

**COMMITTEE ON THE IMPACT OF
DOMESTIC VIOLENCE AND THE COURTS**
Minutes
February 10, 2015
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Carol Scott Berry, Carla F. Boatner, Ellen R. Brown, Chief Steven W. Campbell, Joi Davenport, Patricia George, Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, Dana Martinez, Captain Jeffrey Newnum, Judge Wyatt J. Palmer, Marla Randall, Assistant Chief Sandra Renteria, Shannon Rich, Rebecca Strickland, Tracey J. Wilkinson

Telephonic: Lynn Fazz

Absent/Excused: Gloria E. Full, Anna Harper-Guerrero, Judge Patricia A. Trebesch

Presenters/Guests: Anthony Coulson (ACJC), Mark Peoples (ACJC), Amy St. Peter (MAG)

AOC Committee Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 10, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts was called to order at 10:00 a.m. by Judge Wendy Million, Chair. Judge Million welcomed existing members and introduced a new member, Patricia George, Assistant City Prosecutor with the City of Phoenix Prosecutor's Office. Judge Million also congratulated Judge Carol Scott Berry for her induction into the Council on Legal Education Opportunity's Hall of Fame.

B. Approval of Minutes

The draft minutes from the November 18, 2014, meeting of the Committee on the Impact of Domestic Violence and the Courts were presented for approval.

Motion: To approve the November 18, 2014, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Wyatt Palmer, **Seconded by** Judge Keith Barth. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Domestic Violence and Order of Protection Process for NICS Reporting of Prohibited Possessors

Anthony Coulson, Arizona Criminal Justice Commission (ACJC) consultant, and Marc Peoples, ACJC program manager for Arizona NICS reporting, reviewed the role of the Arizona NICS Task Force, the type of information collected and reported to NICS and other repositories, and the categories that disqualify an individual from purchasing a firearm. Mr. Coulson identified current challenges to collecting and reporting prohibited

possessors data to NICS (e.g., gaps in processes, disparate processes among law enforcement, prosecution, and courts, and lack of training), and focused on opportunities for prohibited firearm possessor reporting in the misdemeanor domestic violence and Orders of Protection processes. He stressed that when there is an opportunity to get the data, it should be taken as early as possible.

- Law enforcement needs to collect specific data points to identify an individual as a prohibited possessor during the arrest process.
- Fingerprinting should be mandatory during the booking process for both misdemeanor and felony domestic violence offenses. Some offenders are not being booked and fingerprinted, resulting in no arrest record or associated history. Courts can help by ensuring the fingerprints are taken; however, training is essential to prevent illegible and rejected fingerprints.
- Conditions of release become even more important when there are no available fingerprints. There is a time gap between an offender's initial appearance to when the information is entered into a system and data is captured in a database. Conditions of release need to be recorded somehow so law enforcement can access the information and identify a prohibited possessor in any jurisdiction.
- Relationships covered under Arizona statute are broader than in federal law, and some protected relationships are not listed or defined in federal law. As a result, some prohibited possessors are not prohibited possessors outside of Arizona. NICS requires a specific relationship between the victim and offender, but the information is not collected in any system. Judges should capture the relationship information on the sentencing order to help identify prohibited possessors under federal law.
- Issued Orders of Protection that are entered into the Court Protective Order Repository (CPOR) might not yet have been served onto the individual, but NICS requires the Orders of Protection to be served before the data is submitted. During this time, law enforcement should be able to access Orders of Protection and download an electronic version that could be served (per the victim's choice).

Members agreed that the relationships listed under federal and state statutes should align and be consistent, and fingerprinting should be mandatory for all domestic violence offenders. Members also supported recording conditions of release for prohibited possessors while ensuring access for law enforcement and making Orders of Protection available to law enforcement. Several questions were raised on how these changes could be realized. The presenters were invited to return at the next CIDVC meeting.

Mr. Peoples inquired whether a court would be willing to pilot an electronic version of the Order of Protection, and he would research available funding grants. Judge Wyatt Palmer from Graham County volunteered his justice court.

B. Maricopa Association of Government (MAG) Protocol Evaluation Project: Informational Video on Orders of Protection for Law Enforcement

Amy St. Peter, MAG Human Services and special projects manager, and Chief Steven Campbell, El Mirage Police Department, presented "Orders of Protection: A Tool For Safety," an informational law enforcement training video that was produced in

collaboration with the Governor's Office for Children, Youth, and Families. The video promotes a more compassionate approach by law enforcement, depicts Orders of Protection as a useful tool to enhance the safety of the community and law enforcement, and allow patterns of abuse to be documented so law enforcement can make arrests and be proactive in assisting victims of domestic violence.

C. Legislative Update

Kay Radwanski reviewed bills of interest to CIDVC that were introduced in the current legislative session. Members may contact Amy Love, AOC legislative liaison, directly with any additional questions.

HB2294: courts; approved screening, treatment facility: Would expand the list of alcohol, drug screening, and domestic violence treatment program facilities to those approved by the U.S. Department of Veterans' Affairs to save on resources.

HB2553: human trafficking victim; vacating conviction: Would vacate a person's conviction of prostitution if it was committed as a direct result of being a victim of human trafficking. If the bill moves forward, it will be subject to several amendments.

HB2637: interference; judicial proceeding; monitoring; classification: Would allow the court to mandate electronic monitoring and obtain a fee if the person is convicted of interference. The bill was introduced yesterday.

HB2640: dependency; households; domestic violence: Would require the members of a child's household to be screened for domestic violence by a Department of Child Safety (DCS) investigator before a child is returned to the child's home.

SB1035: domestic violence treatment programs; providers: Would allow a court to approve a domestic violence offender treatment program for misdemeanor offenders in addition to facilities approved by a probation department or the Department of Health Services. If the bill is approved, it will be subject to rules adopted by the Arizona Supreme Court.

SB1064: service of process; regulation: Would prescribe rules for alternative and substitute service of process. If the bill moves forward, it will be amended to apply only to photo enforcement notices of violation because it could be problematic for victims of domestic violence.

SB1314: domestic violence; arrest; predominant aggressor: Would allow a peace officer to arrest only the predominant aggressor in a domestic violence situation. The bill did pass unanimously in the Senate Judiciary committee but is also assigned to a second committee.

SB1048: vexatious litigants; fees; costs; designation: Would prohibit a court from granting a waiver of court fees or costs for vexatious litigants. The bill is moving forward but will be subject to an amendment excluding family law cases.

D. Rule 28 Petitions—ARPOP

Ms. Radwanski reviewed current rule petitions affecting the Arizona Rules of Protective Order Procedure (ARPOP). The deadline to submit comments is May 20, 2015. The Supreme Court will meet in late August or early September to review and decide on all rule petitions that have been filed.

R-15-0010 was filed by CIDVC to amend the ARPOP so the rules are more readable to self-represented litigants in keeping with *Advancing Justice Together*. CIDVC will have until June 20, 2015, to file a response or an amended petition to any comments received.

R-15-0016 seeks the repeal of current Rule 6(E)(4)(e)(2) regarding the requirement that a judicial officer ask a plaintiff about the defendant's use or access to weapons for an Injunction Against Harassment. Ms. Radwanski sought feedback from CIDVC on whether to file a formal comment. The ARPOP Workgroup (Judge Carol Scott Berry, Gloria Full, Patricia Madsen, Shannon Rich, Judge Patricia Trebesch, and Tracey Wilkinson) will meet to draft a comment and present at the next CIDVC meeting.

E. Case Law Update / Bench Briefing Update

Case Law Update: Ms. Radwanski discussed two opinions that have been issued recently by Arizona courts relating to domestic violence.

The Arizona Court of Appeals, Division I, issued an opinion in *Michaelson v. Garr* in May 2014 that affirmed the superior court's decision to continue the Order of Protection after a contested hearing. The defendant appealed and contended that the court did not state a basis for continuing the order and the portion of the order preventing him from possessing a weapon violated federal law. The appellate court found that the court properly considered a partially illegible email as proof that Garr violated the ex parte order because the email clearly displayed his name, email address, and the date sent. The appellate court also found that the court did not err in continuing the firearm prohibition based on state law.

In December 2014, the Arizona Supreme Court issued an opinion in *State v. Ketchner* that affirmed Ketchner's convictions and sentences on three counts of aggravated assault and one count of attempted first-degree murder, but reversed the felony murder and burglary convictions and sentences because the sociologist's expert testimony about separation violence, lethality factors, and characteristics common to domestic abusers was inadmissible profile evidence, and the error was not harmless. The case is remanded to the superior court for a new trial on the felony murder and burglary charges.

Bench Briefing Update: Ms. Radwanski reported that Bench Briefing 3: Firearms, Domestic Violence, and Protective Orders, was just released. Bench Briefing 4: Conducting Ex Parte Protective Order Hearings will launch in April, and Bench Briefing 5: Relief—What Can Be Ordered? has been recorded. She also noted that judges and court staff can earn 30 minutes of COJET when viewing two Bench Briefing videos.

F. Introduction – Strategic Planning

Judge Million discussed setting direction and priorities for the committee for the upcoming year that are consistent with CIDVC's expertise and purpose. After considering several issues to address, members agreed to form three new workgroups.

1. Judicial Conference Workgroup: All CIDVC judges will work together to identify potential speakers and propose domestic violence sessions for the annual Judicial Conference.
2. Orders, Enforcement, and Access Workgroup: Will discuss electronic Orders of Protection, using remote video access for protective order petitions (e.g., for hospital patients, domestic violence shelters), enforcing Orders of Protection, addressing conflicting orders, and reporting prohibited possessors of firearms to NICS, including conditions of release and transmitting issued Orders of Protection.

Chair: Judge Carol Scott Berry

Workgroup members: Judge Keith Barth, Ellen Brown, Chief Steven Campbell, Patricia George, Patricia Madsen, Jeffrey Newnum, Judge Wyatt Palmer, Marla Randall, Shannon Rich, Rebecca Strickland, Tracey Wilkinson

3. Training and Education Workgroup: Will discuss expanding video bench briefings to a broader audience, developing an expert panel, sponsoring events, providing outreach to new judges (a list of new justices of the peace and magistrates should be compiled), and informing judges about changes in case law, court rules, and legislation.

Chair: Judge Keith Barth

Workgroup members: Judge Carol Scott Berry, Carla Boatner, Ellen Brown, Lynn Fazz, Anna Harper-Guerrero, Judge Statia Hendrix, Dana Martinez, Shannon Rich

Ms. Radwanski will email action items to each workgroup.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

During the Good of the Order/Call to the Public, Karen Duckworth-Barnes addressed the committee.

B. Next Committee Meeting Date

May 12, 2015; 10:00 a.m. to 2:00 p.m.

State Courts Building, Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

The meeting adjourned at 1:18 p.m.